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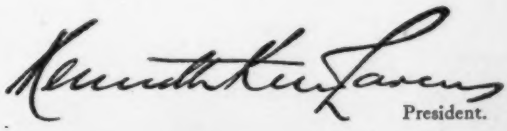
THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal exclusively with members of the bar.

Attention is directed to the article on page 269 of this number of The Corporation Journal, in connection with the necessity for the production of the stock ledger at stockholders' meetings of Delaware corporations.

On page 280 will be found letter from the New York State Tax Commission, to the effect that since section 10 of the New York Stock Corporation Law provides that no transfer of stock shall be valid as against the corporation until an entry has been made upon the stock book kept within the state, such entry requires payment of a stock transfer tax even though all things else pertaining to the transfer take place without the state.

See also, recent decision by the Supreme Court of Illinois on page 278 holding that a foreign corporation having the purposes and powers of an agency and loan corporation cannot acquire title to stock of an Illinois corporation.



President.

THE CORPORATION JOURNAL

Edited by John H. Sears of the New York Bar

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August and September. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

When it is desired to preserve the Journal in a permanent file, a special ring binder will be furnished at cost ($2) and thereafter each copy will be punched to fit the binder.

The Corporation Trust Company, publisher of the Journal, was founded in 1892 to gather and compile for lawyers official information in regard to the laws, regulations, court decisions and local practice in various states relating to the organization, qualification, taxation and maintenance of business corporations; and to assist attorneys in the details of organization or qualification in any state.

For the conduct of this branch of its business the company now has offices and representatives in every state and territory of the United States and in every province of Canada. It furnishes complete and up to the minute information, precedents and assistance in drafting all required papers for incorporation or qualification in any state, territory or province, and under the attorney's direction performs all necessary steps, and furnishes the statutory office or agent required. This service is rendered to members of the bar only.

Because of the unique organization thus built up, especially trained and experienced in the gathering and furnishing of exact official information, it naturally fell to the lot of The Corporation Trust Company to originate and furnish, as they became needed, The Federal Tax, Federal Reserve Act, Federal Trade Commission, Supreme Court, and New York Tax Services; The Corporation Tax Service, State and Local; The Stock Transfer Guide and Service (covering all requirements under the various state Inheritance Tax and Federal Estate Tax Laws, the various state probate laws, and the Uniform Requirements of the New York Stock Transfer Association, relating to the transfer of corporation securities); The Congressional Service (covering proposed legislation in Congress); and special services to lawyers and their clients having business to take up with committees, commissions, boards or officials at Washington.

Incorporated under the banking law of the State of New York, and its affiliated company incorporated under the trust company law of the State of New Jersey, the company is also qualified to act for corporations as Transfer Agent or Registrar of their securities, or as Trustee, Custodian of Securities, Escrow Depositary, or Depositary for Reorganization Committees. As an adjunct to these services it also assists counsel in procuring the listing of securities on the New York Stock Exchange.

Details of any of these services will gladly be furnished at any of the company's offices.

Election of Directors

Evidence as to who are stockholders entitled to vote.

What is the only evidence as to who are stockholders entitled to vote at an election of directors of a Delaware corporation? The answer to this is found in section 29 of the Delaware Corporation Law, providing *inter alia* that an alphabetical list of stockholders entitled to vote shall be prepared, to be open at the place where the election is to be held for the examination of any stockholder, but further providing that: "*The original or duplicate stock ledger shall be the only evidence as to who are stockholders entitled to examine such list or the books of the company or to vote in person or by proxy, at such election.*" This portion of section 29 has been before the Court of Chancery of Delaware in the case of Schultz v. Commonwealth Mortgage Company, 107 Atl. 774, the court holding under this section that the stock ledger of a corporation is the only evidence as to who are stockholders entitled to vote at an election of directors. It is perhaps, common practice to only produce at the stockholders' meeting, the alphabetical list, no thought being given to the necessity for producing the stock ledger. The alphabetical list would possibly be sufficient, in case no question was raised as to the right of any stockholder to vote, but in case that right was contested, the stock ledger, would under the statute and the above mentioned decision, be the only evidence as to who are stockholders entitled to vote at such elections.

Under the circumstances, not infrequently counsel in anticipation of opposition from dissenting stockholders, has deemed it advisable, not to rely merely upon the alphabetical list of stockholders taken from the stock ledger as evidence as to who are stockholders entitled to vote, but have asked that the only evidence as to who are entitled to vote, that is, the stock ledger, be brought to the stockholders' meeting.

Take for instance a case where one set of books was kept in Delaware and another at a transfer office in New York, and the stockholders' meeting was to be held at a place distant from both of these points. If a contest or dissent was expected, it would be necessary to produce one of these sets of books at the stockholders' meeting in order to have the only evidence as to who is entitled to vote.

Much inconvenience would be caused to the corporation if it is necessary to produce its stock ledger at every meeting of stockholders. As the stock ledger must be left in one place to properly record the daily transfers of stock it would seem that the only solution in case a contest of the right to vote was expected, would be to provide for the holding of the meeting in the state where the books are commonly kept.

The Wilmington office of The Corporation Trust Company is amply equipped for the holding of meetings in Delaware and many of our Delaware corporations hold their meetings in that state so as to have at hand an up to the minute stock ledger evidencing the stockholders entitled to vote.

Domestic Corporations

Arkansas.

Action taken at meeting of part of board, held valid. In a proceeding involving the sale of an oil and gas lease, it was claimed that certain officers had no authority to negotiate the sale for the reason that no regular meeting of the board of directors was held at which such officers were authorized to act. It appeared that three directors were residents of Arkansas while the other two resided without the state. No notice was given to the nonresident directors of the holding of the meeting authorizing the sale of the lease, and the meeting was informally held by the three Arkansas directors. This action was in accord with past custom and the nonresident directors were cognizant of this custom. Further the secretary of the corporation executed a certificate under the corporate seal setting forth a resolution passed at the meeting authorizing the sale of the lease. The United States Circuit Court of Appeals (Eighth Circuit) holds that the corporation is estopped to question the action of the officers in executing the lease, by reason of its habit of holding out the Arkansas officers and directors to transact all corporate business, and by reason of the provisions of the articles of incorporation relative to the powers of its officers, and the certificate executed by such officers over the seal of the corporation confirming the authority to lease, and that the board of directors at a regular meeting had acted on the subject. Forrest City Box Co. v. Barney, 14 F. (2d) 590. W. T. Saye and Mahony, Yocum & Saye, all of El Dorado, for appellant. A. D. Keeney and Will Steel, both of Texarkana, for appellee.

California.

Stockholders liability. The constitutional and statutory provisions relating to the liability of stockholders become essential terms of the subscription agreement of a stockholder as fully as if they were set forth at length therein. By accepting ownership of stock in a corporation, the stockholder in effect offers to make payment, to the extent of his stockholder's liability, to any person who may extend credit to the corporation during the period of his ownership. Whenever, during such ownership, any person so extends credit to the corporation, the offer and the act of extending credit combined make a complete contract between the stockholder and the creditor. It thus appears that the stockholder's liability to the creditors of the corporation is not based upon the agency, in any general sense, of the corporation to impose such liability upon him but upon his own agreement, implied from his acceptance of the ownership of stock. His liability arises by operation of law from the creation and existence of the debt, not through any power of the corporation to bind him to personal liability for its obligations. The liability of the stock-

holder is primary, and is conditional or contingent only in this: That there must be a subsisting debt against the corporation. The Supreme Court of California in addition to the above says that the principle upon which a stockholder becomes liable for corporate debts is analogous to that which binds the writer of a general letter of credit which contemplates a course of future dealing, as provided by statute. Aronson & Co. v. Pearson, 249 Pac. 188. W. I. Gilbert, of Los Angeles, for appellant. Page & Hunt, of Los Angeles, for respondent

Canada.

Directors, salary of. In an action brought by a director of a company, claiming salary due, it was pleaded that any services rendered were rendered as a director of the company in furtherance of its interests and that no by-law had been passed authorizing payment of the remuneration claimed for the services. The Manitoba King's Bench in answer to the question of whether or not such a by-law was necessary holds that under the statute the by-law is imperative and that a director cannot in its absence make claim to salary. Menzies v. Tyndall Quarries Co., 4 D. L. R. 350. C. K. Guild, of Winnipeg, for plaintiff. H. V. Hudson, K. C., of Winnipeg for defendant.

Colorado.

Pledge or transfer of stock to be effectual must be perfected by entry upon books, within statutory period. In a proceeding involving a pledge of stock the Supreme Court of Colorado holds that the pledge was lost by reason of the failure to make a memorandum of the pledge upon the books of the company within the statutory period of sixty days. The Court relies on the case of Hexter v. Shahan, 66 Colo. 159 to the effect that the assignment of stock certificates vests in the assignee an inchoate title, which for 60 days has the effect of a complete title, but unless within that time it is perfected by the entry of the transfer upon the books of the company, it expires, and the transfer becomes invalid; the title of the assignor has not been divested, and the stock is subject to attachment at the suit of his creditors. That the statute to the same extent applies to pledges of stock as well as to an assignment thereof is settled. Mulvihill v. First Nat. Bank of Arvada, 249 Pac. 504. Charles A. Stokes and Jesse H. Sherman, both of Denver, for plaintiff in error. Frank B. Goudy and Frank L. Ross, both of Denver, for defendant in error.

Georgia.

Charter power. Right to become accommodation indorser. The Court of Appeals of Georgia (Division No. 2) says that a commercial corporation having the authority, expressly conferred by its charter, "to buy and sell, hold as investment, and otherwise deal and traffic in stocks, bonds, securities, and other obligations of other corpora-

tions of every kind whatsoever, to act as financial agent for the corporation, make financial connections and arrangement for same, and supervise and audit the accounts of same and receive compensation therefor, to negotiate loans and arrange and obtain credits for individuals and corporations, and to receive compensation therefor, and in general to engage in all acts usual and convenient to the accomplishment of any one or all of the purposes therein set out," and "to aid in any manner any other corporation whose stock, bonds, or other obligations are held or in any manner guaranteed by said corporation, and to do any other act or thing for the preservation, protection, improvement or enhancement of the value of any such stocks, bonds, or other obligations, or to do any acts or things designed for such purposes," has the charter power to become a surety or accommodation indorser upon the note of another corporation in which it owns stock. The law sustains the defense that an act is ultra vires "only where an imperative rule of public policy requires it." Bankers' Trust & Audit Co. v. Hanover Nat. Bank of New York, 134 S. E. 195. Meriwether F. Adams, of Eatonton, and Wm. H. Key, of Monticello, for plaintiff in error. Allen & Pottle, of Milledgeville, for defendant in error.

Corporation cannot recover on promissory note given for stock where it is without authority to issue it, although authority is subsequently obtained. In an action brought to recover upon a note given a corporation for its preferred stock, it appeared that at the time of the execution of the note, there was no preferred stock and that the charter of the corporation did not at that time authorize the issuance of it. The Court of Appeals of Georgia, (Division No. 2,) in connection with this says that an executory contract by a corporation for the sale of a portion of an issue to be made of preferred stock, but which it is without legal authority to issue, is void for the lack of a valid consideration moving to the purchaser, and he is not liable on a note given for its purchase, in the absence of any subsequent conduct on his part amounting to a ratification of the unauthorized agreement after legal authority for the issuance had been obtained. It appeared at the time the alleged contract was made and the note for the preferred share executed, that the corporation had not only failed to obtain the consent of the authorities required by law to approve such issue, but was without charter authority to issue the same, and, it not appearing that, after such authority had been obtained, the defendant had in any way ratified the invalid agreement. Parks v. Washington & L. R. Co. 133 S. E. 634. Burnside & McWhorter, of Lincolnton, for plaintiff in error. W. A. Slaton, of Washington, Ga., for defendant in error.

Kansas.

De facto corporation. A de facto corporation has the same capacity as a corporation de jure to enter into contracts, and it is sufficient to show a de facto corporate existence in order to sustain an action against an association as a corporation upon a contract made by it. The Supreme Court of Kansas, in addition to the above, says that while, in the instant case, the incorporation had not been fully completed,

officers had been chosen, the interests of the parties in the company were determined, and leases were turned in as assets of the company on a basis agreed upon for which shares of stock to specified persons were issued and delivered. It therefore appears that the association had the essential elements of a de facto corporation, the existence of which could not be collaterally attacked, and the fact that it was subject to attack by the state in a direct proceeding of ouster could not operate to relieve the company from liability upon a contract. Douglass v. Midland Oil Co., et al., 247 Pac. 1048. Carr W. Taylor, of Hutchinson, for appellant. A. C. Malloy, R. C. Davis, and Warren H. White, all of Hutchinson, for appellee.

Minnesota.

Assessment of stockholders where debts exceed charter limits of indebtedness. In a proceeding to sequester the property and liquidate the indebtedness of an insolvent corporation, where its charter limits the maximum indebtedness and the debts exceed the amount so specified, after the exhaustion of the corporate assets, the Supreme Court of Minnesota holds that the stockholders are liable individually only to the amount of the indebtedness lawfully contracted, not exceeding par value of stock held by them, and are not liable for the expenses of the receivership in addition thereto. The rate of assessment was therefore modified so as to limit the amount realized, to the maximum indebtedness fixed by the charter. National Farmers' Bank of Owatonna v. Clifton Co., 208 N. W. 959. A. L. Sperry and Leach & Leach, all of Owatonna, for appellant. Sawyer, Gausewitz & Lord, of Owatonna, for respondent.

Stockholders liability in transfer of shares not fully paid. The section of the Code making stockholders personally liable for the debts of the corporation to the extent of the amount unpaid on the stock held by them, and providing that such liability of a stockholder is determined by the amount unpaid upon the stock or shares owned by him at the time such action is commenced is declaratory of the common-law rule that, when a subscriber in good faith makes a legally complete transfer of stock which has not been fully paid, he is released from further liability to corporate creditors. The Supreme Court of Minnesota in holding as above affirms a judgment for defendants in an action brought by creditors to recover an unpaid balance on stock of a corporation. Northwest Paper Co. et al. v. Neill et al., 210 N. W. 148. Tifft & Youngdahl, of Minneapolis, for appellants. A. J. Rockne, of Zumbrota, and Albert Mohn, of Red Wing, for respondents.

North Carolina.

Directors, liability of. The Supreme Court of North Carolina says that directors and managing officers of a corporation are deemed by the law to be trustees, or quasi trustees, in respect to the performance of their official duties incident to corporate management, and are therefore liable for either willful or negligent failure to perform their official duties. Therefore, if there is a loss of the corporation's assets, caused and brought about by the negligent failure of its officers to perform their duties, the

corporation, or its receiver, in case of insolvency, can maintain an action therefor. However, the officers of a corporation are not, as a rule, responsible for mere errors of judgment, or for slight omissions from which the loss complained of could not have reasonably resulted. North Carolina Corporation Commission v. Harnett County Trust Co., 134 S. E. 656. Seawell & McPherson and Hoyle & Hoyle, all of Sanford, for appellants

Texas

Corporation not liable for overissue of stock purchased from president. In the present case the evidence disclosed that the president of the Terminal Hotel Company called upon the plaintiff in an effort to sell him some stock which he the president, owned in the corporation. After some negotiations, the sale was made and the president delivered the stock certificate issued in the name of the purchaser and was paid for the stock. This certificate was an over-issue, and the present action was brought by the purchaser against the corporation. It further appeared that the president had requested the secretary of the company to sign the certificate in blank and had then filled out the certificate in the name of the purchaser, put on the corporate seal and delivered it without the surrender of any old stock certificate for transfer on the corporate books. The Commission of Appeals of Texas (Section B), in holding that the corporation was not liable makes the following statement: "Where a man buys stock, as Williams did, under a certificate such as we have here, he is advised at the time that it is not a completed transfer until the old stock is surrendered. Generally speaking, it is more prudent to buy the original certificate owned by the selling stockholder and have him execute an assignment thereon. Unless that precaution be exercised, one ordinarily cannot be said to have exercised due care." The court further says that when one buys stock conditioned as these shares were, from a stockholder of a corporation who is also an officer thereof, authorized to sign the stock certificate, such purchaser must make reasonable inquiry to see that the by-laws relating to the transfer of its stock have been complied with. He cannot escape this duty on the presumption that the company's officers have given it attention, when one of them is adversely interested in the transaction. Williams v. Terminal Hotel Co., 280 S. W. 505. Austin F. Anderson and McGown, McGown & Anderson, all of Fort Worth, for appellant. McLean, Scott & McLean, of Fort Worth, for appellee.

Vermont.

Consolidation of corporations incorporated in different states. In connection with the consolidation of a New Hampshire corporation and a Vermont corporation, the Supreme Court of Vermont says that the corporate entity which is brought into existence by the consolidation of two or more constituent corporations under the authority of the law of the states creating them constitutes a new corporation possessed of all necessary corporate attributes and there being no statute to the contrary, the stockholders, directors, and officers of such a corporation

can hold meetings and transact business in each state concerned in its creation so as to bind the corporation and its property everywhere. Such corporation is responsible as a unit for the acts and neglects of itself or its agents and servants; it is a citizen of each state for the purpose of jurisdiction; process is to be served upon it as upon a domestic corporation in the state where suit is brought and a judgment rendered against it by a court having jurisdiction will bind it everywhere. The court further says that it is enough to hold that the consolidated corporation in New Hampshire, at least, has all the rights, and is subject to all the liabilities, specified in the charter granted by that state, and in Vermont, at least, has all the rights, and is subject to all the liabilities, specified in the charter granted by that state. In each state, however, it acts and is answerable for its acts as a new corporation possessed of all essential corporate attributes. Vermont Valley R. R. v. Connecticut River Power Co. of New Hampshire, 133 Atl. 367. Stickney, Sargent & Skeels, of Ludlow (Arthur P. Carpenter, of Brattleboro, and William B. C. Stickney, of Bethel, and Walter S. Fenton, of Rutland, of counsel), for platintiff. McLellan, Carney & Brickley, and Curtis & Curtis, all of Boston, Mass., for defendant.

Virginia.

Directors meeting, notice of. In March, 1920, four of the directors of the Interstate Railroad Company, lived in Philadelphia and the remaining two in Big Stone Gap, Va. On March 11, 1920 the four Philadelphia directors held a special board meeting and adopted a resolution accepting the provisions of section 209, Transportation Act, 1920. The meeting above mentioned was held in the forenoon of March 11th and no advance notice of the meeting was given to either of the two Virginia directors. On March 11, before the meeting was held, one of the directors in Philadelphia wrote to one of the Virginia directors of the proposed action and the reason therefor, and inclosed a formal notice of a special board meeting to be held in Philadelphia at 10 a.m., on March 11th. Written under the notice was a blank acceptance and waiver, and the writer of the letter requested that the two Virginia directors sign the foregoing waiver and return it to him. This letter reached the Virginia directors on March 13th, and the waiver was on that day signed by the two directors and sent to Philadelphia. The United States District Court (Western District, Virginia) in connection with this says that a waiver such as was executed by the two Virginia directors cannot by any possibility have any legal effect, unless it has the effect of a ratification of the action of a part of the board taken at the then past and illegal meeting. An act done at an illegal board meeting may be ratified and given a retroactive validity at a subsequent legally held board meeting. But the nature of the office of director of a private corporation is such that directors cannot effectively act as directors, except at duly held board meetings. As the Virginia directors at Big Stone Gap, on March 13th, had no power to ratify the act done at the illegal meeting on the 11th, they consequently had no power to waive or excuse the failure to give them advance notice of that meeting. To hold otherwise is to hold that directors, acting individually and out of board meeting, have a power which they can exercise only as members of a majority of a quorum at a

INCORPORATION?

The Corporation Trust Company maintains at Wilmington, Delaware, the largest, best-equipped organization in that State devoted to handling for counsel all matters of corporate organization and maintenance.

This company furnishes counsel with complete information, precedents and forms for drafting all papers required for incorporation in Delaware; attends to the filing of all papers and publication of required notices; furnishes temporary incorporators, holds the first meeting, and opens the minute book; and subsequently maintains for the corporation, under counsel's supervision, the required office and agent in the state, keeps the original or duplicate stock ledger in the state, and notifies counsel of the date for filing state reports and paying state taxes and of all other matters necessary for maintaining the company's corporate standing in the state. The Corporation Trust Company is the oldest and largest organization engaged in this line of work. Its services in incorporation are available to lawyers only.

legally held board meeting. And this seems a conclusive reason for holding that the waiver, is an absolute nullity. United States v. Interstate R. Co., 14 F. (2d) 328. J. C. Shaffer, U. S. Atty., of Roanoke, and C. E. Gentry, Asst. U. S. Atty., of Charlottesville. J. F. Bullitt, of Philadelphia, Pa., and John W. Chalkley and J. F. Bullitt, Jr., both of Big Stone Gap, for defendant.

Foreign Corporations

Illinois.

Foreign corporation having the power and purposes of an agency and loan corporation cannot acquire title to stock of Illinois corporation. The Supreme Court of Illinois in a recent decision holds that where the purposes and powers of a foreign corporation include, under the omnibus form of charter, the right to deal in securities, to carry on an agency business and to lend money, it is an agency and loan corporation and therefore cannot acquire title to or hold and own the stock of an Illinois corporation in view of the provisions of section 9 of the Illinois Corporation Law, which provides that no agency and loan corporation shall purchase or otherwise acquire or loan money upon the stock of any other corporation, whether organized under the laws of Illinois or any other state. The instant case involved among other things, the transfer of certain shares of stock of the Addressograph Company to the Addressing Machines Securities Company a foreign corporation, organized primarily to hold the stock. The court says that such transfer was void and that since the Addressing Machines Securities Company was prohibited by law, from acquiring stock, because among its many other powers were those of an agency and loan corporation, it could not vote it. Hall et al. v. Woods et al. (Not yet officially reported.) Alden, Latham & Young; Tenney, Harding, Sherman & Rogers, and Cooke, Sullivan & Ricks, all of Chicago for Woods et al. West & Eckhart, Alice Greenacre, Charles S. Deneen and Wm. B. Hale, all of Chicago for Hall et al.

New Jersey.

Appointment of receiver for foreign corporation. The present bill was filed by stockholders of a foreign corporation, its purpose being to obtain an adjudication that the corporation is insolvent and the appointment of a receiver to take charge of its property and assets. A decree was entered directing that an injunction issue against the corporation, restraining it from exercising any of its privileges or franchises granted by the statutes of New Jersey; or from collecting or receiving any debts due to the corporation; or paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements or effects, except to a receiver to be appointed by the court. The Court of Errors and Appeals of New Jersey in affirming the decree with modification says that the court may appoint a receiver of a foreign corporation and sequester its assets located in the state for the benefit of the stockholders, and the creditors of the corporation who are residents of the state. In the exercise of this power of sequestering assets, the court may require debtors of the corporation who are residents of the state to pay their debts to the

receiver appointed by the court, but the court is without power to restrain a foreign corporation from collecting or receiving debts due to it from non-residents or from selling, assigning or transferring its estate and assets located outside of the boundaries of the state. Baldwin et al. v. Berry Automatic Lubricators Corp., Vol. IV, No. 44 N. J. Adv. Rep. 1697. McCarter & English, of Newark, for appellant. Samuel M. Hollander and Israel B. Greene, both of Newark for respondent.

Ohio.

Suit by nonresident against foreign corporation on cause of action arising outside of state not maintainable. In the instant cases, suits were brought in Ohio by a resident of Pennsylvania against a foreign carrier, on cause of action arising outside the state on the assumption that section 11290, General Code, providing that when the defendant is a foreign corporation having a managing agent in the state, service may be upon such agent, authorized such service. The Court of Appeals of Ohio (Hamilton County) in holding that the lower court properly quashed the services relies on the case of Davis v. Farmers' Co-operative Equity Co., 262 U. S. 312, and says that in these cases the above section is repugnant to the interstate commerce clause of the Constitution of the United States. Iron City Produce Co. v. American Ry. Express Co. Albert M. Travis Co. v. Same, 153 N. E. 316. Hightower, O'Brien & Porter, of Cincinnati, for plaintiffs in error. Maxwell & Ramsey and Frank Graydon, all of Cincinnati, for defendant in error.

Oregon.

Assignment by delinquent foreign corporation to domestic corporation. In the present case the Milton-Freewater & Hudson Bay Irr. Co., a domestic corporation claims an interest in the right of way or lateral ditches involved in this suit by virtue of an assignment from the Walla Walla Irrigation Company, a foreign corporation. It was pleaded, however, that the Walla Walla Company was a foreign corporation, unauthorized to do business in the state, the delinquency being that of a failure to pay its fees; that the plaintiff corporation bases its rights upon the alleged assignment and that it took the assignment with full knowledge of the lack of authority of the Walla Walla Company to transact business. It was shown that prior to the commencement of the suit that the Walla Walla Company had paid the fees required to qualify. The real question, therefore, is whether or not a contract made by an Oregon corporation in Oregon with a foreign corporation, which had not complied with the provisions of the statute authorizing it to continue to do business, is void, or whether the same can be enforced by the Oregon corporation after the foreign corporation has complied with the statute subsequent to the time of making the contract. The Supreme Court of Oregon in passing on this point found that the right of the foreign corporation to transact business in the state had not been revoked or repealed by the Governor for failure to pay the fee and that the proclamation of the Governor, mentioned in the statute marks the line cutting off the right of a foreign corporation which was theretofore authorized to transact business, and which

has become delinquent by failing to comply. The whole statute indicates that the entire authority of such a delinquent corporation is in abeyance. Moreover, the saving clause in the statute, that "the said delinquency of such corporation or joint-stock company or association shall not operate to impair or delay the right of any other person, firm, or corporation," applies to the condition in the present suit where the plaintiff is operating an irrigation ditch under a lease or assignment from the delinquent Washington corporation. In view of the finding of the court that the contract of the foreign corporation was not void, the judgment of the Circuit Court dismissing the suit, was therefore reversed. Milton-Freewater & Hudson Bay Irr. Co. v. Skeen, 247 Pac. 756. J. H. Raley of Pendleton (Raley, Raley & Steiwer and H. J. Warner, all of Pendleton, on the brief), for appellant. Stephen A. Lowell and Edward J. Clark, both of Pendleton (Lowell, Clark & McIntyre, of Pendleton, on the brief), for respondent.

Taxation

Louisiana.

Inheritance tax. This action was brought against the Tremont Lumber Company, a corporation organized under the laws of Louisiana to compel the company to transfer certain shares of its capital stock standing upon its books in the name of a decedent without the payment of any inheritance tax to the state of Louisiana. It appeared that the decedent was domiciled, resided and died in Cook County, Illinois, and at the time of death and previously, the certificates of stock were held at the above domicile and were not and had never been within the State of Louisiana. The Supreme Court of Louisiana in holding the shares not subject to inheritance tax says that the shares of stock inherited by plaintiff (a nonresident) from her mother (also a nonresident) under the laws of another state cannot, under the very terms of the statute, be subjected to an inheritance tax, unless the same be held to have been physically within the state at the time the inheritance accrued. Since the shares of stock were not physically within the state no tax accrued. Newell v. Tremont Lumber Co. et al. 109 So. 344. Theus, Grisham & Davis, of Monroe, White, Holloman & White, of Alexandria, and Denegre, Leovy & Chaffe, of New Orleans, for appellant. R. B. Williams and Peterman, Dear & Peterman, all of Alexandria, for appellee Tax Collector.

New York.

New York stock transfer tax with respect to New York corporations. Attention is directed to the following letter received from Frank S. McCaffrey, Deputy Commissioner, New York State Tax Commission, under date of November 11th, 1926, relative to the Stock Transfer Tax on transfers of shares of New York corporations: "In response to your recent inquiry relative to the Stock Transfer Tax Law, and also to Section 10 of the New York Stock Corporation Law, you are advised that Section 10 of the New York Stock Corporation Law does require

that all domestic corporations keep within this State, a stock book wherein is entered the names of all persons who are stockholders of the corporation showing their places of residence, the number of shares of stock held by them respectively, the time when they became owners thereof, and the amount paid thereon. This section further provides, that no transfer of stock shall be valid as against the corporation and etc., until such entry has been made therein. This entry is a necessary part of the transaction to complete it.

"This office rules that when any part of a transaction necessary to complete a transfer of stock, takes place within the State of New York a stock transfer tax accrues thereon, consequently the entry in the stock book required under Section 10 of the New York Stock Corporation Law requires the payment of a stock transfer tax, even though all things else pertaining to this transfer take place outside of the State. If the stock certificate book of a New York State Corporation is kept outside of the State, then the tax accruing on the recording in the stock book as above referred to, should be attached to the stock book."

In view of the above ruling a New York corporation maintaining a transfer agency without the state will still be required to pay a stock transfer tax to New York because of the provisions of Section 10 of the New York Stock Corporation Law.

Federal Tax Matters

Outstanding features of a few of the many interesting rulings and decisions from October 20 to November 20, in The Federal Tax Service of The Corporation Trust Company are briefly summarized here. The complete reports should be examined to determine the extent of their application. These decisions and rulings, it must also be remembered, are not necessarily final. The citations are all to the above named Service.

United States Circuit Court of Appeals, 4th Circuit, holds that (1) Congress has power, and by the Revenue Act of 1921 manifested an intention to impose an income tax upon the gains of criminal transactions; (2) the Revenue Act of 1921 does not furnish to one who makes incriminating disclosures in his income tax return an immunity from prosecution equivalent to the protection afforded by the Fifth Amendment; (3) the privilege against self incrimination provided by the Fifth Amendment furnishes a complete defense to an indictment charging a natural person, under Section 253 of the Revenue Act of 1921, with failure to file a return of income under Section 223, when the return, if filed, would disclose that the income was earned by the defendant in the course of the commission of a crime (Part 1, ¶4469). . . . Certain expenditures on account of repairs and alterations made to leased property by the lessee, and reverting to the lessor, held (Circuit Court of Appeals, 5th Circuit) to be deductible by the lessee as current expense items rather than capital expenditures to be amortized over the term of the lease (Part 1, ¶4486). . . . The

Circuit Court of Appeals, 2nd Circuit, affirms the District Court in deciding that a partner may not exclude from his distributive share in the profits of the partnership the amount paid or credited to a subpartner. Judge Manton dissents with an opinion (Part 1, ¶4501). . . . A corporation acquiring all the share stock, and, as shareholder, all the assets of another corporation which is then dissolved, is liable to the extent of the assets taken over for such other corporation's Federal tax obligations according to the Circuit Court of Appeals, 5th Circuit (Part 1, ¶4519). . . . The Court of Appeals for the 2nd Circuit finds that an annuity provided by the will of a deceased husband to be paid to his widow out of the income, or if need be out of the principal, of a trust fund in lieu of dower and accepted in lieu thereof, is a purchased annuity, and, being such, the payments on account thereof are exempt from tax until the aggregate receipts equal the purchase price of the annuity, i. e., the statutory dower (Connecticut) (Part 1, ¶4523). . . . In the Court of Claims it was held that the income of a trust created by will, payable to a beneficiary for life, is not a tax exempt bequest but is "income" to the beneficiary and taxable as such to him (Part 1, ¶4526). . . . A member of a partnership may credit against his net income for income tax purposes his proportionate share of the excess profits tax imposed on and paid by the partnership under the 1917 Act —so holds the Circuit Court of Appeals, 2nd Circuit (Part 1, ¶4548). . . . Articles 215 and 216 of the Regulations under the 1918, 1921 and 1924 Acts pertaining to depletion and the adjustment of accounts based on bonus or advanced royalty are amended to read as does the corresponding article of the Regulations under the 1926 Act (Art. 216, Reg. 69) except that the last paragraph in the new Regulations, having to do with the new 27½% provision of the 1926 Act does not find place in the amended Article, of course (Part 1, ¶4571). . . . More than one hundred decisions are handed down by the Board of Tax Appeals in the course of a month (Part 1, "Board of Tax Appeals" division). . . . A certain business trust is held to be an association subject to tax as a corporation and no gain or loss is recognized on the transfer of property to said trust for substantially all of the shares of beneficial interest (Bull. V('26)-43, p. 2). . . . A credit made by the Commissioner after the statutory period on refunds and credits has expired is null and void (Bull. V('26)-43, p. 7). . . . Instructions and illustrations for computing the earned income credit under the Revenue Act of 1926 are published (Bull. V('36)-44, p. 1). . . . In ascertaining the amount remaining to be recovered through depletion for 1919 and subsequent years in the case of the copper mining companies there should be deducted from the March 1, 1913 value, as redetermined, the depletion actually sustained for the years 1913-1918, inclusive, based on the new valuation (Bull. V('26)-44, p. 5). . . . A trust created for the management and sale of eight buildings improved for office and business properties is held to be an association and therefore taxable as a corporation (Bull. V('26)-45, p. 1). . . . The Unit rules in the matter of the allocation of a loss in the case of a partner making return on a calendar year basis, the partnership computing its income on the basis of

a fiscal year (Bull. V('26)-45, p. 5). . . . Cost of stock transferred to an employee by a majority stockholder of a corporation in order to induce such employee to remain in the employ of the corporation a certain length of time is not deductible by the stockholder as a business expense (Bull. V ('26)-45, p. 3). . . .

In deciding as to a general power of appointment the District Court for the Eastern District of Pennsylvania holds that the word "general" is not defined by the mode or manner of the exercise of the power but by the absence of limitations of the power when exercised in the prescribed manner (Part 2, Estate Tax, ¶999-62). . . . The Court of Claims decides that the amount of the Federal estate tax even though it be a charge against the estate allowed by the law of the local jurisdiction is not an item deductible from the gross estate in determining the net estate subject to tax (Part 2, Estate Tax, ¶999-72). . . . The procedure outlined in Regulations 70 for the release of the estate tax lien should be followed and is the only safe course for purchasers and title companies; also a discussion of suggestions for the modification of the procedure (Bull. V ('26)-45, p. 11). . . . For the purposes of the gift tax under the 1924 Act a donor having "received" the vested right in the property bequeathed to her under her husband's will more than five years prior to her gift thereof (though said donor did not come into physical possession of the property until shortly before the gift was effected) is not entitled to the deduction of the amount of the gift because of having been previously included for tax in the estate tax return (Bull. V ('26)-45, p. 12). . . . The United States District Court for the Northern District of Alabama, Southern Division, decides as to the extent to which development expenses may be capitalized in the case of certain coal mines and the "cost" of certain tenant houses is determined for invested capital purposes (Part 2, Excess Profits Tax, ¶2654). . . . The Court of Claims holds that a taxable "initiation fee" is one that is such in the common and ordinary meaning of the words, one that once paid will never be returned to the person paying it, and does not embrace the purchase price of a proprietary certificate of interest in the club's assets or of a certificate of club company stock which purchase price may be refunded to the purchaser under certain contingencies, and further that a club (the collecting agency) may bring suit for the recovery of amounts collected by it on account of the tax on initiation fees and dues and paid over by it to the collector of internal revenue (Part 2, Admissions and Dues Taxes, ¶6888).

Notes

For corporation lawyers the feature of greatest significance in the reorganization of the Chicago, Milwaukee and St. Paul Railroad announced November 18, one of the most important and widely discussed financial operations of recent years, is the fact that the new company organized by the Kuhn, Loeb-National City Bank interests to take over and operate the road was incorporated under the laws of

Delaware. Speaking of this feature the original press announcement points out:

> "The bankers, in anticipation of the sale, incorporated the new company in Delaware, thereby saving $375,000 in taxes or the difference between the $25,000 asked by Delaware and the $400,000 which would have been required under the state laws of Wisconsin, where the present St. Paul company is incorporated."

The filing of the incorporation papers in Delaware, and the statutory representation of the company in that state, were entrusted by counsel to The Corporation Trust Company.

As part of the financing operations of the huge German interests of the late Hugo Stinnes two American corporations were recently organized—Hugo Stinnes Corporation, authorized capital 1,200,000 shares of no par value, and Hugo Stinnes Industries, Inc., authorized capital 300,000 shares of no par value. Both companies were incorporated in Maryland and in both cases the details of incorporation were entrusted by counsel to The Corporation Trust Company.

The advantage to an attorney of handling his corporation work through an organization with the experience and continent-wide facilities of The Corporation Trust Company was never better illustrated than in the case of a Chicago lawyer a few days ago. One of his corporation clients was suddenly confronted with the necessity of being qualified in the state of California by the end of the week—it was then Wednesday. He enlisted the aid of the Chicago office of this company. Papers were prepared and executed and dispatched for California by air-mail that afternoon and had been filed by Friday noon—just forty-eight hours after the work was started.

Organization was effected November 18 of the American, British and Continental Corporation, a world-wide banking institution composed of the J. Henry Schroder Banking Corporation, New York; Blyth, Witter & Co., New York; J. Henry Schroder & Co., London; Banque de L'Union Parisienne, Paris; Dresdner Bank, Berlin; Societe de Generale de Belgique, Brussels; Credit Suisse, Switzerland; Allgemeine Osterreichische Boden-Credit-Anstalt, Vienna, Stockholms Enskilda Bank, Stockholm; Hungarian Commercial Bank of Pesth, Budapest; Lipmann, Rosenthal & Co., Amsterdam, and Boehmische Union Bank, Prague. Counsel for the interests involved selected Delaware for incorporation and The Corporation Trust Company to attend to the filing of papers and statutory representation of the corporation in that state.

"Six Points to Watch in Incorporation" is the title of a new pamphlet just issued for the convenience of counsel by The Corporation Trust Company.

A new scheme for swindling corporation stockholders has appeared recently. A man claiming to represent a corporation in which the prospective victim is known to own stock calls and states that the company has increased its capital stock and desires to take up the outstanding certificates in exchange for new.

The new certificate is displayed, bearing all the ear-marks of genuineness and as an added attraction it represents twice the number of shares represented by the stockholder's original certificate. Part of the plan seems to be to select those stockholders most likely to be out of touch with the corporation's affairs. If the trick is successful the swindler of course quickly realizes on the genuine certificate and the stockholder at some later date discovers himself to be possessed of only a bogus certificate.

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378 corporations were organized under the laws of Delaware from October 20 to November 20, as against 354 for the preceding 30-day period and 394 for the corresponding period of 1925.

Some Important Matters for December and January

ALASKA—Annual Corporation Tax due on or before January 1—Domestic and Foreign Corporations.

ALABAMA—Annual Fee for Permit to Do Business, due January 1—Foreign Corporations.

CALIFORNIA—Annual License Tax due between January 1 and First Monday of February—Domestic and Foreign Corporations.

Capital Stock Affidavit due between January 1 and first Monday of February—Foreign Corporations.

CONNECTICUT—Annual Report due on or before February 15—Domestic and Foreign Corporations.

DELAWARE—Annual Report due on or before first Tuesday in January—Domestic Corporations.

DISTRICT OF COLUMBIA—Annual Report due between January 1 and January 20—Domestic Corporations.

INDIANA—Annual Report due during January—Foreign Corporations.

KENTUCKY—Annual Report due on or before February 1—Domestic and Foreign Corporations.

NEW YORK—Annual Franchise Tax based on Income of Business Corporations due on or before January 1—Domestic and Foreign Business Corporations other than realty and holding companies.

Capital Stock Report, Real Estate and Holding Corporations, due between January 1 and February 15—Domestic and Foreign Corporations.

OHIO—Report to Industrial Commission due during January—Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual Statement due on or before January 31—Foreign Corporations.

UNITED STATES—Fourth Instalment of Income Tax imposed for the calendar year 1925 due on or before December 15.

UTAH—Corporation License Tax due between November 15 and December 15—Domestic and Foreign Corporations.

WISCONSIN—Income Tax due on or before January 31—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

What Constitutes Doing Business. A 128-page pamphlet containing brief digests of 301 decisions selected from those in the various states as indicating what is construed in each state as "doing business."

Six Points to Watch in Incorporation. A valuable reminder for attorneys when planning a corporate structure or drafting incorporation papers.

Two Notable Certificates of Incorporation. Contains the certificate of Standard Oil Company of California, and that of Tide Water Associated Oil Company.

Safeguarding Stock Transfers. Dealing with the many pitfalls in transferring stock on a corporation's books.

Delaware Corporations.—Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non-par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

Shares Without Par Value. Explains some of the advantages of such shares and presents brief synopses of the statutory provisions for issue in the 39 states in which they are authorized.

Paying Too Much in Taxes. Shows how taxpayers may unwittingly make themselves liable for more income tax than is necessary.

Corporation Laws of New York. Contains the Stock Corporation Law, Business Corporations Law, provisions affecting Navigation Corporations, Omnibus Corporations, Sections of the Penal Laws, Blue Sky Law, Corporation Tax Law, Extracts from the Executive Law, and complete Index.

When Doing Business Is Illegal. A brief discussion, illustrated by many actual examples taken from the court records of various states, of the difference between "Interstate" and "Intrastate" business.

Revenue Act of 1926. A reprint of the law as furnished to subscribers to The Federal Tax Service of this Company.

New Jersey Corporations. Text of the 1926 amendments permitting stockholders' meetings outside the state, and freeing stock of non-resident decedents (after July 1, 1926) from the state's inheritance tax.

Transfer Requirements Chart. This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfers are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.

Lawyers' Preliminary Work Sheets. Large sheets for the double purpose of reminding counsel of all the various points on which he may need information from his client before starting the preparation of incorporation papers, and furnishing a convenient medium on which to record such information in rough but systematic form for later reference.